

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

THE UNITED STATES OF AMERICA
ex rel. DONALD GALE

Plaintiff,

v.

OMNICARE, INC.,

Defendant.

CASE NO. 1:10-CV-00127

OPINION & ORDER
[Resolving Doc. [183](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Non-party Joel Germunder, a resident of Florida, moves to quash a trial subpoena served on him by Relator David Gale. Gale seeks Germunder's trial testimony in this False Claims Act case.^{1/} Germunder says that the subpoena does not comply the with requirements of [Federal Rule of Civil Procedure 45](#) because service was improper, places an unreasonable burden on him, and some technical defects.^{2/} The Court **DENIES** the motion to quash.

[Title 31 United States Code section 3731\(a\)](#) allows a trial subpoena to be served on a person at any place in the United States. This statute "creates a subpoena power that exceeds the court's subpoena authority under Rule 45."^{3/} Accordingly, service on Germunder in Florida was proper.

Additionally, personal service was not required. Rule 45 nowhere provides that personal service of a subpoena is required. Instead, "[s]erving a subpoena requires delivering a copy to the

^{1/}Doc. [183](#).

^{2/}*Id.*

^{3/}[United States ex rel. Wilson v. Bristol-Myers Squibb, Inc., C.A. No. 06-12195, 2013 WL 3327317, at *3 \(D. Mass June 27, 2013\)](#) (finding "the weight of authority" supports this interpretation).

Case No. 1:10-CV-00127
Gwin, J.

named person^{4/} The facts show that Germunder was served by certified mail that included the fees and milage costs.^{5/} Therefore, Germunder was served appropriately.^{6/}

The subpoena is not unduly burdensome. This Court has set the trial for this case on October 28, 2013.^{7/} Germunder's own filings show that he had been in communication with Gale's counsel in September and was aware of the substance of what he would be asked.^{8/} His testimony is also relevant to Omnicare's per-diem pricing strategy and its due diligence in acquiring companies that had per-diem arrangements. The fact that Gale did not depose Germunder does not make his testimony unnecessary, particularly where Germunder attempted to evade sitting for a deposition.^{9/}

The Court finds that Germunder's other objections to the subpoena lose. Therefore, the Court **DENIES** Germunder's motion to quash the subpoena.

IT IS SO ORDERED.

Dated: October 19, 2013

s. James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

^{4/}[Fed. R. Civ. P. 45\(b\)\(1\)](#).

^{5/}Doc. [185-6](#).

^{6/}*See, e.g., Powell v. Time Warner Cable, Inc.*, 2010 WL 5464895, at *2-*3 (S.D. Oh. Dec. 30, 2010) (“[T]he drafters [of the Civil Rules] knew how to indicate a personal service requirement, but chose not to do so in Rule 45. . . . The Court agrees with and adopts the analyses of those courts finding that service of a subpoena is effective so long as it reasonably insures actual receipt.”).

^{7/}*See* Docket Notice filed Oct. 17, 2013.

^{8/}Doc. [183-1](#) at 9-11.

^{9/}*Id.*